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EXERCISED IN THE PRESENCE OF SOVIET TROOPS. HE IS SHARPLY CRITICAL OF THE DRAFT CONSTITUTION. HE PRESENTS "NATIONAL RECONCILIATION" AS A FLAWED BUT POSSIBLY PROMISING INITIATIVE. ERMACORA DOES NOT ACCEPT LRA CONTENTIONS THAT THE PAKISTANI AUTHORITIES ARE IMPEDING THE REFUGEES' RETURN, BUT IMPLICITLY REPORTS NO CONTINUING REFUGEE OUTFLOW. HE REPORTS A DIMINUTION IN THE USE OF TORTURE BY CPA AUTHORITIES. HE MAKES REPEATED REFERENCE TO THE MARCH 1986 VISIT BY AN ICRC TEAM TO FOL-I-CHAHAMI PRISON, WITHOUT NOTING THE ICRC VIEW THAT THAT SINGLE VISIT DID NOT MEET ICRC STANDARDS, COULD NOT BE REPEATED, AND WAS FOLLOWED BY THE WITHDRAWAL OF ALL MEMBERS SAVE ONE OF THE TEAM. ERMACORA UNCritICALLY ACCEPTS THAT ISLAM IS FREELY PRACTICED IN CPA-CONTROLLED AREAS. HIS REPORT IS MOST DISAPPOINTING AND LEAST CREDIBLE IN REPEATING UNCritICALLY THAT ANTI-PERSONNEL AND TOY BOMBS WERE SHOWN HIM IN A KARL "WAR MUSEUM," IMPLYING THAT THE MUJAHIDIN -- AND NOT THE CPA -- REGULARLY USE THESE FIENDISH WEAPONS.

3. AS REPORTED IN REFTELCONS, POLCONS DISCUSSED REPORT WITH GAHAM ON OCTOBER 27. GAHAM NOTED THAT IT WOULD BE RE-EVALUATED BY THE LW SECRETARIAT TO CONFORM TO UNEA FORMAT STANDARDS. ERMACORA COULD, IF HE RECEIVED NEW INFORMATION, PREPARE AN ADDENDUM TO HIS REPORT. THERE MIGHT BE A PROBLEM OF OVERALL LENGTH -- IN GENEVA, THE SECRETARIAT LIMITED THE LENGTH TO 32 PAGES (THE 127 PARAGRAPHS COVERED 31 PAGES). FINALLY, IN PRESENTING HIS REPORT TO THE UNEA, ERMACORA COULD PLACE IT IN A SOMEWHAT LESS SKEWED PERSPECTIVE. THESE POSSIBILITIES SHOULD BE EXPLORED IN NEW YORK AND BY UNVIE WITH ERMACORA; AT BEST, THEY HOLD OUT SOME HOPE OF DAMAGE LIMITATION. ON FIRST READING, NONETHELESS, ERMACORA'S REPORT SEEMS A MITIGATED DISASTER FROM THE WESTERN PERSPECTIVE. THE FOLLOWING EXCERPTS ARE ILLUSTRATIVE. END SUMMARY AND CONCLUSION.

4. MANDATE OF THE SPECIAL RAPPORTEUR

EN CONSEQUENCE, AU COURS DE LA VISITE QU'IL A EFFECTUEE EN AFGHANISTAN DU 30 JUILLET AU 9 AOÛT 1987, LE RAPPORTEUR SPECIAL A RENCONTRE, CONFORMEMENT AU PROGRAMME ETABLI, DES REPRESENTANTS GOUVERNEMENTAUX DES MINISTRES DES AFFAIRES ETRANGERES, DE LA JUSTICE, DES REFUGIES RAPATRIES, DES AFFAIRES TRIBALES, DE L'ECONOMIE NATIONALE, DE LA SANTE PUBLIQUE, DES STATISTIQUES, DE L'INTERIEUR ET DE LA SECURITE D'ETAT. IL A EGLEMENT RENCONTRE DES RESPONSABLES DU PARTI DEMOCRATIQUE POPULAIRE AFGHAN (PDPA) ET DU FRONT NATIONAL, AINSI QUE LE PRESIDENT DU TRIBUNAL REVOLUTIONNAIRE ET LE PROCUREUR GENERAL. IL A EU DES CONTACTS AVEC DES RESPONSABLES SYNCIQAUX ET RELIGIEUX, DES MEMBRES DE LA COMMISSION DE RECONCILIATION NATIONALE, DU COMITE NATIONAL DES FEMMES, DE L'UNIVERSITE DE KAHOL, DU PARTI DEMOCRATIQUE DE LA

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* C O N F I D E N T I A L *

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JEUNESSE, AINSI QU'AVEC LES CHEFS TRIPAUX DES PROVINCES
FRONTALIERES. PAR AILLEURS, A KAROUL LE RAPPORTEUR
SPECIAL A VISITE DES LIEUX DE DETENTION, TELS QUE LA
PRISON CENTRALE DE POL-I-CHAKHI, AINSI QUE LES CENTRES
D'INTERROGATOIRES DE SACARAT, SHASHCARAT ET LARLIWAN.
AU COURS DE SES VISITES LE RAPPORTEUR SPECIAL S'EST
LIBREMENT ENTRETENU, ET SANS TEMOINS, AVEC QUELQUES
DETENUS. IL A EN OUTRE VISITE CINQ HOPITAUX: L'HOPITAL
AVICENNA, L'HOPITAL ULMOGRIAT, L'HOPITAL EL CROISSANT
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VI. THE FIVE MISSIONS

REUILL, L'HOPITAL ABRA ALBAR CHAN ET L'HOPITAL DES
FORTS AVANT. IL S'EST ENFIN ENCREUSJ AVEC HOMRE SE
PERSONNE LIBEREE EN 1987 PAR SUITE DES AMISTIES
PROCEDES PAR LE GOUVERNEMENT ALGERIEN.

5. POLITICAL CONTEXT AND EVOLUTION OF THE SITUATION OF HUMAN RIGHTS IN AFGHANISTAN

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CONVENTUE POURRAIT AMELIORER LA SITUATION EN MATIERE DES DROITS DE L'HOMME. CE FAISANT, IL AVAIT MENTIONNE LE RETRAIT PARTIEL DES TROUPES SOVIETIQUES EFFECTUE ENTRE LE 15 OCTOBRE 1986 ET LA FIN DE L'ANNEE 1986; IL AVAIT FAIT ETAT DE L'APPEL A LA RECONCILIATION NATIONALE, A LA DECLARATION DE CESSZ-LE-FEU DE SIA MOIS A COMPTER DU 15 JANVIER 1987 AINSI QUE DU DECRET D'AMNISTIE DU 1ER JANVIER 1987.

LE GOUVERNEMENT FAISAIT ALORS OBSERVER QUE DES MESURES AINSI PRISES ETAIENT TOUTES L'EXPRESSION DE SES PRINCIPES ET DE SA POLITIQUE HUMANISTE QUI TENDAIENT A ASSURER LA REALISATION PROGRES ET SYSTEMATIQUE DES DROITS DE L'HOMME GRACE A LA PARTICIPATION LA PLUS LARGE POSSIBLE DU PEUPLE DANS LES DOMAINES POLITIQUE, ECONOMIQUE, SOCIAL ET CULTUREL DE LA VIE NATIONALE.

THE GOVERNMENT'S APPEAL FOR NATIONAL RECONCILIATION WAS THE MAJOR POLITICAL EVENT IN EXTERNAL AND INTERNAL POLICY IN AFGHANISTAN. THE EVALUATION OF THE POLICY OF NATIONAL RECONCILIATION DIFFERS WIDELY AMONG ALL THE PARTIES AFFECTED. THE SPECIAL RAPPORTEUR HAS ALREADY HAD OCCASION TO REMARK THAT, IN REGARD TO HUMAN RIGHTS, SUCH A POLICY MUST BE ANALYZED IN THE LIGHT OF THE REAL AND EFFECTIVE ENJOINTMENT OF HUMAN RIGHTS BY ALL CITIZENS OF THE COUNTRY WHEREVER THEY LIVE, BEFORE AND DURING THE COMPLETE WITHDRAWAL OF SOVIET TROOPS FROM THE COUNTRY.

IT IS CLEAR TO THE SPECIAL RAPPORTEUR, HOWEVER, THAT THE PRESENCE OF A "SMALL CONTINGENT OF SOVIET FORCES" ON THE ONE HAND, AND THE EXISTENCE OF MILLIONS OF AFGHAN REFUGEES OUTSIDE THEIR COUNTRY ON THE OTHER, ARE INTERRELATED AND DIRECTLY AFFECT THE PROBLEM OF SELF-DETERMINATION OF THE AFGHAN PEOPLE. THIS IS A BASIC HUMAN RIGHTS PROBLEM, SINCE THE RIGHT TO SELF-DETERMINATION IS RECOGNIZED AS A FUNDAMENTAL HUMAN RIGHT.

A CEL EGARD, REPONDANT A LA QUESTION SOULEVEE PAR LE RAPPORTEUR SPECIAL SUR LE RESPECT DU PRINCIPE D'AUTODETERMINATION ET LA PRESENCE DU CONTINGENT LIMITE DANS LE PAYS. UN MEMBRE DU COMITE CENTRAL DU PDPA A DECLARE QU'EN VERTU DE L'ALINEA 2 DE L'ARTICLE PREMIER DU PROJET DE CONSTITUTION, LE NON-ALIGNMENT DE L'AFGHANISTAN SE TROUVE CONSACRE DANS CET INSTRUMENT. QUOIQUE CETTE POLITIQUE FAISAIT DEJA PARTIE DE LA TRADITION DE L'AFGHANISTAN ET N'A RIEN DE CONTRADICTOIRE AVEC LA PRESENCE D'UN CONTINGENT LIMITE. IL A TENU A PRECISER QUE LES AUTORITES SOVIETIQUES AVAIENT DECIDE D'ENVOYER CE CONTINGENT A L'INVITATION DU GOUVERNEMENT AFGHAN, CE QUI, DU RESTE, ALLAIT DANS LE SENS DE L'ARTICLE 51 DE LA CHARTE DES NATIONS UNIES.

WITHOUT GOING INTO THIS VERY REAL PROBLEM, THE SPECIAL

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RAPPORTER WISHES TO COMMENT ON THE LEAD OF THE NR.

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TRANSCRIPTION - ORIGINAL FOLLOWS

DRAFT CONSTITUTION INsofar AS IT CONCERNS HUMAN RIGHTS PROBLEMS OR PROBLEMS WHICH ARE LINKED WITH HUMAN RIGHTS. THE SPECIAL RAPPOREUR HAS ALREADY REPORTED ON THE FUNDAMENTAL PRINCIPLES OF THE DEMOCRATIC REPUBLIC OF AFGHANISTAN WHICH ARE STILL IN FORCE. THE TEXT OF THE DRAFT CONSTITUTION MUST BE SEEN IN THE LIGHT OF THESE FUNDAMENTAL PRINCIPLES AND THE REFORM DECREES ISSUED AFTER APRIL 1978. ARTICLE 136 OF THE DRAFT STATES THAT, WITH THE ENFORCEMENT OF THE NEW CONSTITUTION, THE FUNDAMENTAL PRINCIPLES WILL BE ABROGATED. THUS THE NEW CONSTITUTION WOULD BE THE ONLY VALID CONSTITUTIONAL TEXT. ARTICLE 137 IS HOWEVER A VERY BROAD ARTICLE BECAUSE IT LEAVES OPEN TO INTERPRETATION WHICH LAWS AND OTHER LEGISLATIVE DOCUMENTS EXISTING PRIOR TO THE ENFORCEMENT OF THE NEW CONSTITUTION ARE TO REMAIN IN FORCE.

ARTICLE 1 EXPRESSLY DESCRIBES THE REPUBLIC AS "A NON-ALIGNED COUNTRY WHICH DOES NOT JOIN ANY MILITARY [ILLEG] AND DOES NOT ALLOW THE ESTABLISHMENT OF FOREIGN MILITARY BASES ON ITS TERRITORY." THE APPLICATION OF THIS ARTICLE WILL CREATE A CONTRADICTORY SITUATION IF SOVIET FORCES ARE STILL PRESENT IN AFGHANISTAN WHEN THE

PARTIAL TRANSCRIPTION - ORIGINAL FOLLOWS

NEW CONSTITUTION COMES INTO FORCE. EVEN TAKING INTO ACCOUNT ARTICLE 4 OF THE TREATY OF FRIENDSHIP WITH THE USSR.

ARTICLE [ILLEG] ALLOWS THE FORMATION OF POLITICAL PARTIES AND PROMISES THAT "A PARTY FORMED IN ACCORDANCE WITH THE PROVISIONS OF THE LAWS CANNOT BE DISSOLVED WITHOUT LEGAL [ILLEG]." IT ALSO STIPULATES THAT "THE PEOPLE'S DEMOCRATIC PARTY OF AFGHANISTAN IS THE ORGANIZER AND GUARDIAN OF THE INFORMATION OF NATIONAL RECONCILIATION POLICY AND FUNCTIONS IN ACCORDANCE WITH THE CONSTITUTION AND LAWS OF THE DEMOCRATIC REPUBLIC OF AFGHANISTAN. THE PEOPLE'S DEMOCRATIC PARTY OF AFGHANISTAN SHALL STRUGGLE FOR JUSTICE AND SOCIAL PROGRESS." THIS PROVISION GIVES THE PDPA A CONSTITUTIONAL GUARANTEE AND THEREFORE CREATES AN IMPORTANT DIFFERENCE BETWEEN THE POLITICAL PARTIES. ON THE OTHER HAND, ARTICLE 3 CREATES THE NATIONAL FRONT WHICH SHOULD [ILLEG] AND "UNITE POLITICAL PARTIES." EXPERIENCE OF NATIONAL FRONTS IN OTHER STATES HAS SHOWN THAT THEY CAN ENDANGER THE FREEDOM TO FORM POLITICAL PARTIES.

CHAPTER IV DEALS WITH THE LOYA JIRGAR. ARTICLE 56 SETS OUT THE MEMBERSHIP OF THE LOYA JIRGAH AND. WHILE OMITTING REFERENCE TO MEMBERS OF POLITICAL PARTIES, IT INCLUDES MEMBERS OF THE EXECUTIVE BOARD OF THE NATIONAL FRONT. ARTICLE 56 MUST BE UNIVERSAL IN ITS REPRESENTATION OF THE PEOPLE OF AFGHANISTAN. IT MUST THEREFORE BE PRESUMED THAT THE REPRESENTATION OF THE [ILLEG] MILLION REFUGEES LIVING OUTSIDE THE COUNTRY WILL BE TAKEN INTO ACCOUNT, OTHERWISE THE LOYA JIRGAH ESTABLISHED IN CHAPTER IV OF THE DRAFT CONSTITUTION WILL BE LIMITED TO THE PRESENT - AND INCOMPLETE - POWER STRUCTURE.

CHAPTER X CONCERNS THE JUDICIARY. THE PROBLEM OF PERSONAL LIBERTY AND ESPECIALLY THAT OF SO-CALLED POLITICAL PRISONERS IS LINKED WITH THE INSTITUTION OF THE REVOLUTIONARY TRIBUNALS AND THE REVOLUTIONARY PROSECUTOR. ARTICLE 117 OF THE DRAFT CONSTITUTION PERPETUATES THEIR EXISTENCE BY PROVIDING FOR THE ESTABLISHMENT OF SPECIAL COURTS AS DO ARTICLE 126 WHICH ESTABLISHES A "SPECIAL ATTORNEY'S OFFICE" AND ARTICLE 130 WHICH PROVIDES FOR THE REGULATION OF THE "STRUCTURE, COMPOSITION, AUTHORITY AND METHOD OF ACTIVITY OF ATTORNEYS."

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NEW CONSTITUTION COMES INTO FORCE. EVEN TAKING INTO ACCOUNT ARTICLE 4 OF THE TREATY OF FRIENDSHIP WITH THE USSR.

ARTICLE 11 PROVIDES THE FORMATION OF POLITICAL PARTIES AND PROVIDES THAT "A PARTY FORMED IN ACCORDANCE WITH THE PRINCIPLES OF THE LAWS CANNOT BE DISSOLVED WITHOUT LEGAL REASON." IT ALSO STIPULATES THAT "THE PEOPLE'S DEMOCRATIC PARTY OF AFGHANISTAN IS THE ORGANIZER AND GUARANTOR OF THE IMPLEMENTATION OF NATIONAL RECONSTRUCTION POLICY AND FUNCTIONS IN ACCORDANCE WITH THE CONSTITUTION AND LAWS OF THE DEMOCRATIC REPUBLIC OF AFGHANISTAN. THE PEOPLE'S DEMOCRATIC PARTY OF AFGHANISTAN SHALL STRUGGLE FOR JUSTICE AND SOCIAL PROGRESS." THIS PROVISION GIVES THE PDPA A MONOPOLITICAL CHARACTER AND THEREFORE CREATES AN IMPORTANT DIFFERENCE BETWEEN THE POLITICAL PARTIES. ON THE OTHER HAND, ARTICLE 5 CREATES THE NATIONAL FRONT WHICH SHOULD COORDINATE AND "UNITE POLITICAL PARTIES." EXPERIENCE OF NATIONAL FRONTS IN OTHER STATES HAS SHOWN THAT THEY CAN ENLARGE THE FREEDOM TO FORM POLITICAL PARTIES.

CHAPTER IV DEALS WITH THE LOYA JIRGA. ARTICLE 66 SETS OUT THE MEMBERSHIP OF THE LOYA JIRGA AND, WHILE MAKING REFERENCE TO MEMBERS OF POLITICAL PARTIES, IT INCLUDES MEMBERS OF THE EXECUTIVE BOARD OF THE NATIONAL FRONT. ARTICLE 65 MUST THEREFORE BE CONSIDERED AS INDICATIVE OR PROVISIONARY, SINCE THE LOYA JIRGA, BY ITS VERY NATURE, HAS TO BE UNIVERSAL IN ITS REPRESENTATION OF THE PEOPLE OF AFGHANISTAN. IT MUST THEREFORE BE PRESUMED THAT THE REPRESENTATION OF THE 5 MILLION REFUGEES LIVING OUTSIDE THE COUNTRY WILL BE TAKEN INTO ACCOUNT. OTHERWISE THE LOYA JIRGA ESTABLISHED IN CHAPTER IV OF THE DRAFT CONSTITUTION WILL BE LIMITED TO THE PRESENT - AND INCOMPLETE - POWER STRUCTURE.

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6. SITUATION OF THE REFUGEES

LA VISITE EFFECTUEE DANS DES CAMPS DE REFUGIES AU PAKISTAN PERMET AU RAPPORTEUR SPECIAL DE SUPPOSER QUE LA NOBRE DE REFUGIES N'A EN TOUT CAS PAS DIMINUE, MEME SI

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7. EVALUATION OF THE HUMAN RIGHTS SITUATION IN AFGHANISTAN

THE SPECIAL RAPPORTEUR HAS ALSO RECEIVED INFORMATION - WHICH HE IS NOT IN A POSITION TO VERIFY - CONCERNING ALLEGED EXECUTIONS IN POL-I-CHARAHI OF DETAINEES FROM PRISONS IN OUTLYING AREAS, SUCH AS JALALAIAD. USING PARTICULARLY INHUMAN METHODS.

DURING THE PERIOD OF INVESTIGATION, THE PERSON IS KEPT AS A PRISONER WHOSE INNOCENCE IS IN QUESTION. HAVING SEEN THE CONDITIONS OF DETENTION OF PERSONS UNDER INVESTIGATION IN SADARAT PRISON, THE SPECIAL RAPPORTEUR IS CONVINCED THAT ANYTHING CAN HAPPEN TO THE PRISONER WITHOUT KNOWLEDGE OF THE OUTSIDE WORLD.

POLITICAL PRISONERS ARE NOT HELD IN ALL PROVINCES; FOR INSTANCE, NAZAR-SHARIF PRISON RECEIVES PRISONERS FROM FIVE PROVINCES. THE MOST NOTORIOUS PRISON IS POL-I-CHARNHI WHERE THE SPECIAL RAPPORTEUR WAS ABLE TO VISIT SOME OF THE BLOCKS AND TO SPEAK TO PRISONERS. IN THIS CONNECTION, ICRC HAS MADE A THOROUGH INSPECTION OF

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LA REPUBLIQUE FEDERALE D'ALLEMAGNE, DE FRANCE, D'ANGLETERRE, DU JAPON, DU ROYAUME-UNI DE GRANDE BRETAGNE ET D'IRLANDE DU NORD ET DE TURQUIE. IL SEMBLE CEPENDANT QUE, POUR LA PLUPART, IL S'AGIT DE REFUGIES NON FRANGAIS. TROIS ELEMENTS PARAISSENT AVOIR ETE A L'ORIGINE DE LEUR DECISION DE RETOURNER AU PAYS: D'ABORD LES DIFFICULTES RENCONTREES PAR TOUS REFUGIES, ENSUITE L'OPPOSITION DES AUTORITES DE LA REPUBLIQUE ISLAMIQUE D'IRAN ET DES LEADERS POLITIQUES DU TRIBAL AU PAKISTAN A LEUR DEPART AURAIT ACCROCHE LEUR DETERMINATION DE RETOURNER AU PAYS EN ENVOI D'APPEL LAISSE PAR LES AUTORITES AFGANES LORS DE LA MISE EN PLACE DU PROCESSUS DE RECONCILIATION NATIONAL.

PLUSIEURS RESPONSABLES EN AFGHANISTAN ONT ETE EN L'OPPOSITION AU RETOUR DES REFUGIES DANS LEUR PAYS. CETTE OPPOSITION ENTRAINE LES AUTORITES AFGANES EN CE QUI CONCERNE LES REFUGIES DE LA REPUBLIQUE ISLAMIQUE D'IRAN ET LES RESPONSABLES POLITIQUES DE LA RESISTANCE DU DRS CHETS ET TRIBAL AU PAKISTAN. A CET EGARD, LE POINT DE VUE GENERALISEMENT REPARTI ETAIT QUE LES REFUGIES TANT EN REPUBLIQUE ISLAMIQUE D'IRAN QU'AU PAKISTAN ETAIENT PERDUS COMME MOYEN DE PRESSION ET SERAIENT UTILISES A FINS STRICTEMENT POLITIQUES.

CONCERNANT PARTICULIEREMENT CES ALLEGATIONS, LE RAPPORTEUR SPECIAL A, AU COURS DE SA VISITE AU PAKISTAN, RECUILLI NOMBRE D'INFORMATIONS, TANT DES AUTORITES OFFICIELLES QUE DE PLUSIEURS REFUGIES AU PAKISTAN, QUI SONT DE NATURE A REMETTRE EN QUESTION DE TELLES ALLEGATIONS.

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THE SPECIAL RAPPORTEUR HAS ALSO RECEIVED INFORMATION - WHICH HE IS NOT IN A POSITION TO VERIFY - CONCERNING ALLEGED EXTORTIONS IN POL-I-CHARAH OF DETAINES FROM PRISONS IN OUTLYING AREAS, SUCH AS JALALABAD, USING PARTICULARLY INHUMAN METHODS.

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TRANSCRIPTION - ORIGINAL FOLLOWS

THIS SPECIAL RAPPOREUR CANNOT PREJUDGE THE FINDINGS OF ICRC WHICH FOLLOWS ITS OWN CAREFULLY PREPARED RULES AND CRITERIA IN VISITING PRISONS. HOWEVER, WE NOTED THAT PRISONERS UNDER INVESTIGATION WERE HELD IN DARK CELLS. IN SADARAT, FOR INSTANCE, BETWEEN ONE AND FOUR PERSONS WERE HELD IN EACH CELL AND, ALTHOUGH THOSE CELLS HAD WINDOWS, THEY WERE PAINTED OVER SO THAT THE DAYLIGHT WAS KEPT OUT. THE INTERROGATION CELLS WERE LOCATED AT SOME DISTANCE FROM THE OTHER CELLS; UNDERGROUND CELLS WERE OBSERVED IN SHAHDARAT BUT NONE IN SADARAT ALTHOUGH THEIR EXISTENCE HAD BEEN INDICATED TO THE SPECIAL RAPPOREUR BY FORMER INMATES INTERVIEWED OUTSIDE AFGHANISTAN. CONDITIONS OF HYGIENE WERE POOR IN ALL PRISONS VISITED.

IN HIS PREVIOUS REPORTS, THE SPECIAL RAPPOREUR HAS MADE REFERENCE TO MANY CASES OF TORTURE OF PRISONERS DURING INTERROGATION WHILST IN DETENTION PENDING INVESTIGATION. IN ITS LATEST REPORT AMNESTY INTERNATIONAL REFERRED TO MANY CASES OF TORTURE DURING THE LAST YEARS OF THE CONFLICT IN AFGHANISTAN, AND PRIVATE ORGANIZATIONS HAVE ALSO REFERRED TO CASES OF TORTURE. THE SPECIAL RAPPOREUR BECAME AWARE DURING HIS LAST VISIT TO PAKISTAN THAT A PSYCHIATRIC CENTER FOR AFGHANS HAS BEEN ESTABLISHED IN PESHAWAR TO TREAT VICTIMS OF TORTURE. HE VISITED THE CENTER AND EXAMINED STATISTICS AND METHODS OF TREATMENT. THE SPECIAL RAPPOREUR MET INDIVIDUALS OUTSIDE AFGHANISTAN WHO ALLEGED THAT THEY HAD BEEN ILL-TREATED OR SUBJECTED TO TORTURE.

AFTER CAREFUL EXAMINATION OF THE ALLEGATIONS OF TORTURE BROUGHT TO HIS ATTENTION, THE SPECIAL RAPPOREUR IS OF THE VIEW THAT MANY OF THEM DO NOT FALL WITHIN THE LEGAL DEFINITION OF THE TERM AS SET OUT IN ARTICLE 1 OF THE CONVENTION AGAINST TORTURE. HOWEVER, PRISON CONDITIONS ARE SUCH THAT THEY MAY BE CONSIDERED AS CONSTITUTING PSYCHOLOGICAL TORTURE, IN WHICH CASE, SUCH TREATMENT MAY BE COVERED BY THE DEFINITION IN THE CONVENTION. MOREOVER, THE SPECIAL RAPPOREUR RECEIVED INFORMATION FROM VERY RELIABLE WITNESSES RESIDING IN AFGHANISTAN THAT NO CASES OF TORTURE OF THE KIND DESCRIBED IN HIS PREVIOUS REPORTS HAD BEEN REPORTED DURING THE PAST SIX MONTHS.

ON THE OTHER HAND, REPRESENTATIVES OF THE ARMED FORCES OF THE GOVERNMENT CLAIMED THAT PRISONERS OF WAR WHO HAD ESCAPED FROM THE CUSTODY OF THE OPPOSITION MOVEMENTS HAD REPORTED THAT THEY HAD BEEN SUBJECTED TO TORTURE AND ILL-TREATMENT.

THE SPECIAL RAPPOREUR VISITED A NUMBER OF MOSQUES AND RELIGIOUS INSTITUTIONS IN KABUL, DURING THE

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AT THE BEGINNING OF 1997, THE GOVERNMENT ANNOUNCED A UNILATERAL CEASE-FIRE TO WHICH THE SOVIET FORCES AGREED. THIS CEASE-FIRE ORIGINALLY PROMISED FOR SIX MONTHS WAS EXTENDED FOR ANOTHER SIX MONTHS AS OF JULY 1997. THE SPECIAL RAPPORTEUR ANALYZED THE DECLARATION OF A CEASE-FIRE IN HIS LATEST REPORT TO THE COMMISSION ON HUMAN RIGHTS IN CN.4/1997/22, PARA.41, AND STATED

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"THAT IT "COULD BE A PRELUDE TO A PEACEFUL SETTLEMENT." HOWEVER, THE OPPOSITION MOVEMENTS DID NOT ACCEPT THE CEASE-FIRE AND THE SPECIAL RAPPORTEUR OBSERVED THAT THE ARMED CONFLICT APPEARED TO HAVE INTENSIFIED IN RECENT MONTHS. THIS IS CONFIRMED BY THE MANY REPORTS OF HEAVY FIGHTING THAT HAD COME TO HIS KNOWLEDGE.

THE SPECIAL RAPPORTEUR OBSERVED SEVERAL WOUNDS RESULTING FROM ANTI-PERSONNEL MINES SUFFERED BY BOTH SOLDIERS AND CIVILIANS. REPORTS ON THE USE OF BOOBY-TRAPPED TOYS HAVE DIMINISHED DURING THE PERIOD COVERED BY THIS REPORT.

IN A WAR MUSEUM IN KABUL, THE SPECIAL RAPPORTEUR WAS SHOWN DIFFERENT WEAPONS THAT HAD ALLEGEDLY BEEN TAKEN FROM RESISTANCE FORCES, INCLUDING TOY BOMBS AND MATERIAL RESSEMBLING THAT USED FOR CHEMICAL WEAPONS. IN THE NAZIR ABBAS KHAN HOSPITAL IN KABUL, THE SPECIAL RAPPORTEUR STUDIED SIX MEDICAL REPORTS DESCRIBING THE PATIENTS AS HAVING BEEN WOUNDED BY CHEMICAL WEAPONS IN THE PROVINCE OF PAKHTIA.

DURING THE PERIOD UNDER CONSIDERATION, THE SPECIAL RAPPORTEUR RECEIVED LITTLE INFORMATION RELATING TO ACTS OF BRUTALITY ATTRIBUTED TO THE ARMED FORCES.

IN THAT CONTEXT, THE SPECIAL RAPPORTEUR HEARD COMMANDERS OF OPPOSITION FORCES WHO CATEGORICALLY REJECTED ANY OBLIGATION UNDER THE GENEVA CONVENTION. ACCORDING TO THEM A WAR OF REVENGE, SUCH AS THE PRESENT CONFLICT, WAS OF A "TOTAL" CHARACTER.

THE SPECIAL RAPPORTEUR NOTED A SIGNIFICANT INCREASE IN NUMBER OF ACTS OF TERRORISM AGAINST AFGHANS INSIDE AND OUTSIDE THE COUNTRY. MORE THAN 4,000 DEATHS HAVE BEEN REPORTED AMONG THE CIVILIAN REFUGEE POPULATION IN THE BORDER AREAS AND IN CITIES IN PAKISTAN. CIVILIAN AIRCRAFT HAVE BEEN SHOT DOWN OVER AFGHAN SOIL. BOMBS PLANTED IN CROWDED PUBLIC PLACES, IN PARTICULAR IN KABUL, HAVE BEEN REPORTED. A COMMANDER OF AN OPPOSITION MOVEMENT HAS RECEIVED A LETTER BOMB. THESE REPORTS COINCIDE WITH REPORTS OF INCREASING ATTACKS IN PAKISTAN TERRITORY; SOME 130 AIR AND ARTILLERY ATTACKS HAVE BEEN REPORTED, CAUSING DAMAGE AND DEATH AMONG THE REFUGEE AND THE CIVILIAN POPULATION.

B. CONCLUSIONS

THE PRESENT SITUATION OF HUMAN RIGHTS IN AFGHANISTAN IS CHARACTERIZED BY GOVERNMENT'S ATTEMPTS TO IMPLEMENT A POLICY WHICH IT CALLS "A POLICY OF NATIONAL RECONCILIATION." IN APPLYING THIS POLICY, THE GOVERNMENT HAS TAKEN A NUMBER OF MEASURES, IN PARTICULAR, IT HAS PROCLAIMED A GENERAL AMNESTY, APPEALED FOR THE RETURN OF REFUGEES AND DECLARED A

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CONFORMITY WITH HUMANITARIAN LAW. THE ARMED CONFLICT HAS IN FACT INTENSIFIED DURING THE PAST MONTHS. CIVILIAN TARGETS ARE ALSO HIT BY RESISTANCE FORCES WHO ARE BETTER EQUIPPED THAN BEFORE. THE FIGURE GIVEN FOR CIVILIAN CASUALTIES FROM THE END OF 1986 TO AUGUST [ILLEG] IS [ILLEG].

A NEW FEATURE IN THE CONFLICT IS THE INCREASE IN ACTS OF TERRORISM AGAINST AFGHANS INSIDE AND OUTSIDE AFGHANISTAN. THIS REPRESENTS A NEW DANGER FOR PERSONAL LIFE, LIBERTY AND SECURITY. MORE THAN 4,000 DEATHS WERE REPORTED DURING THE PERIOD UNDER CONSIDERATION IN THE BORDER AREAS AND IN CITIES IN PAKISTAN. SEVERAL AIR AND ARTILLERY ATTACKS IN PAKISTAN TERRITORY ENDANGERED HUMAN LIVES AND GOODS.

THE NUMBER OF REFUGEES - ANOTHER RESULT OF THE ARMED CONFLICT - IN PAKISTAN AND IN THE ISLAMIC REPUBLIC OF IRAN DECLINED SINCE THE SPECIAL RAPPORTEUR'S LATEST REPORT TO THE COMMISSION AND REMAINS AT SOME [ILLEG] MILLION. THE GOVERNMENT'S POLICY TO PERSUADE REFUGEES TO RETURN HAS BROUGHT 82,000 PERSONS FROM VARIOUS COUNTRIES, SOME OF WHOM WERE INTERVIEWED BY THE SPECIAL RAPPORTEUR. HE WAS UNABLE TO EXAMINE THE RETURN PROCESS IN DETAIL, BUT NOTED THAT THE EFFORTS OF THE GOVERNMENT TO BRING ABOUT THE RETURN OF THE REFUGEES WERE HAMPERED BY THE PREVAILING SITUATION.

THE NEW DRAFT CONSTITUTION DOES NOT CONTAIN ANY REAL SAFEGUARDS FOR THE EFFECTIVE REALIZATION OF THE FULL RANGE OF HUMAN RIGHTS AND THE SPECIAL COURTS AND SPECIAL PROSECUTOR ESTABLISHES UNDER REVOLUTIONARY DECREES CAN STILL BE "LEGALLY" MAINTAINED. THERE ARE NO PROVISIONS FOR APPEAL TO AN INDEPENDENT AUTHORITY AGAINST ARBITRARY DETENTION AND THE LOYA JIRGAH ENVISAGED IN THE DRAFT CONSTITUTION APPEARS TO LACK THE UNIVERSALITY THAT IS PART OF ITS VERY ESSENCE.

9. RECOMMENDATIONS

THE MANDATE OF THE SPECIAL RAPPORTEUR DOES NOT PERMIT HIM TO MAKE RECOMMENDATIONS OF A POLITICAL NATURE, HOWEVER HIS RECOMMENDATIONS TOUCH UPON POLITICAL ELEMENTS BECAUSE HUMAN RIGHTS AND POLITICAL STRUCTURES ARE INTERRELATED. A LARGE PART OF THE POPULATION HOLDS THE VIEW THAT THE WITHDRAWAL OF SOVIET TROOPS IS A PRECONDITION FOR THE FREE AND EFFECTIVE EXERCISE OF THE RIGHT TO SELF-DETERMINATION, WITHIN THE MEANING OF ARTICLE 1 OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS.

10. KABUL, MOSCOW MINIMIZE CONSIDERED. PETRONE

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CONFORMITY WITH HUMANITARIAN LAW. THE ARMED CONFLICT HAS IN FACT INTENSIFIED DURING THE PAST MONTHS. CIVILIAN TARGETS ARE ALSO HIT BY RESISTANCE FORCES WHO ARE BETTER EQUIPPED THAN BEFORE. THE FIGHTING GOES ON FOR CIVILIAN CASUALTIES FROM THE END OF 1966 TO AUGUST 1971 IS 14,072.

A NEW PHASE IN THE CONFLICT IS THE INCREASE IN ACTS OF TERRORISM AGAINST ARABANS INSIDE AND OUTSIDE PAKISTAN. THIS REPRESENTS A NEW DANGER FOR PERSONAL LIFE, LIBERTY AND SECURITY. MORE THAN 4,000 DEATHS WERE REPORTED DURING THE PERIOD UNDER CONSIDERATION IN THE BORDER AREAS AND IN OUTLIES IN PAKISTAN. SEVERAL AIR AND MISSILE ATTACKS IN PAKISTAN TERRITORY ENDANGERED HUMAN LIVES AND GOODS.

THE NUMBER OF REFUGEES - ANOTHER RESULT OF THE ARMED CONFLICT - IN PAKISTAN AND IN THE ISLAMIC REPUBLIC OF IRAN FOLLOWED UP BY THE SPECIAL RAPPORTEUR'S LATEST REPORT TO THE COMMISSION AND REMAINS AT SOME 8.5 MILLION. THE GOVERNMENT'S POLICY TO PERMIT REFUGEES TO RETURN HAS BROUGHT BACK SOME 32,000 PERSONS FROM VARIOUS COUNTRIES. SOME OF THEM WERE INTERVIEWED BY THE SPECIAL RAPPORTEUR. HE WAS UNABLE TO EXAMINE THE RETURN PROCESS IN DETAIL, BUT NOTED THAT THE EFFORTS OF THE GOVERNMENT TO BRING ABOUT THE RETURN OF THE REFUGEES WERE HAMPERED BY THE PREVAILING SITUATION.

THE NEW DRAFT CONSTITUTION DOES NOT CONTAIN ANY REAL GUARANTEES FOR THE EFFECTIVE REALIZATION OF THE FULL RANGE OF HUMAN RIGHTS AND THE SPECIAL COURTS AND SPECIAL PROSECUTOR ESTABLISHED UNDER REVOLUTIONARY DECREES CAN STILL BE "LEGALLY" MAINTAINED. THERE ARE NO PROVISIONS FOR APPEAL TO AN INDEPENDENT AUTHORITY AGAINST ARBITRARY DETENTION AND THE LOYA JIRGAH ENVISAGED IN THE DRAFT CONSTITUTION APPEARS TO LACK THE UNIVERSALITY THAT IS PART OF ITS VERY ESSENCE.

A. RECOMMENDATIONS

THE MANDATE OF THE SPECIAL RAPPORTEUR DOES NOT PERMIT HIM TO MAKE RECOMMENDATIONS OF A POLITICAL NATURE. HOWEVER HIS RECOMMENDATIONS TOUCH UPON POLITICAL MATTERS BECAUSE HUMAN RIGHTS AND POLITICAL STRUCTURES ARE INTERRELATED. A LARGE PART OF THE POPULATION HOLDS THE VIEW THAT THE WITHDRAWAL OF SOVIET TROOPS IS A PREREQUISITE FOR THE FREE AND EFFECTIVE EXERCISE OF THE RIGHT TO SELF-DETERMINATION. WITHIN THE MEANING OF ARTICLE 1 OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS.

18. AEBOL MOSCOW MINIMIZE CONSIDERED. PETROVA
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